IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

NO. 76-1467

UNITED STATES STEEL CORPORATION,
Petitioner,
v.
UNITED MINE WORKERS OF AMERICA, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT and APPENDICES

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United States Steel Corporation, Petitioner, respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Third Circuit entered in the above-entitled case on December 20, 1976, rehearing denied January 25, 1977, in which the court reversed the district court and remanded the cause with directions to enter judgment in favor of all respondents[1] notwithstanding the jury verdict.

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1. Respondents are individually designated in the Statement of the Case, *infra*, p. 4.

OPINIONS BELOW

The Opinion and Order of the district court dated November 15, 1975, is unpublished. (Appendix A, *infra*, pp. 1a-10a). The Opinion of the United States Court of Appeals for the Third Circuit is reported at 548 F.2d 67, and was filed on December 20, 1976. (Appendix B, *infra*, pp. 11a-28a).

JURISDICTION

The judgment of the court of appeals was entered on December 20, 1976, (Appendix C, *infra*, pp. 28a-29a). A petition for rehearing, timely filed, was denied without opinion on January 25, 1977. (Appendix D, *infra*, p. 31a).

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). The jurisdiction of the district court was by virtue of 29 U.S.C. §185.

QUESTIONS PRESENTED

Where a national labor agreement between an international union on behalf of itself and its members and an employer association on behalf of its member-employers contains both an unusually broad arbitration clause and a separate promise to maintain the integrity of the agreement by exclusive resort to arbitration for settlement of unresolved disputes, but does not contain an express no-strike clause,

1. Does a strike by one local union in sympathy with the illegal strike of a sister local over an arbitrable dispute constitute a breach of that agreement?

2. Does a finding of inaction in terminating a strike in sympathy with an illegal strike over an arbitrable dispute render the international union liable in damages for permitting the spread of the illegal strike?

3. Does the general verdict in favor of the employer entitle it to an inference that the jury found the instant strike was over a safety dispute as claimed at trial by the Union, and that the Union's failure to arbitrate was not excused by the existence of abnormally dangerous conditions for work?

STATUTES INVOLVED

This case involves the interpretation and application of Sections 203(d) and 301 of the Labor-Management Relations Act of 1947, as amended, 61 Stat. 136 *et seq.*, 29 U.S.C. §141 *et seq.* (hereinafter the "Act"). Relevant portions of the Act are set forth in Appendix E, *infra*, p. 31a.

STATEMENT OF THE CASE

On August 19, 1969, Petitioner, United States Steel Corporation (the "Company") brought this action against the United Mine Workers of America International ("International"), United Mine Workers of America District 4 ("District 4"), and United Mine Workers of America Local 6321 ("Local 6321"), (hereinafter collectively referred to as the "Union"), pursuant to Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. §185, seeking, *inter alia,* monetary damages against the Union for losses resulting from a work stoppage at the Company's Robena Mine complex in Greene County, Pennsylvania.[2]

At all times material to this proceeding, the Company and the Union were parties to the National Bituminous Coal Wage Agreement of 1968 (the "Agreement"), Exhibit A to the Complaint, relevant portions of which are reproduced in Appendix F, *infra,* pp. 32a-34a. The "Settlement of Local and District Disputes" provision of the Agreement contained a detailed grievance procedure and a broad arbitration clause which provided for compulsory, final and binding arbitration of "differences between the Union and the Company as to the meaning and application of the provisions of [the] Agreement . . ." and ". . . differences . . . about matters not specifically mentioned in [the] Agreement . . ." and ". . . any local trouble of any kind [arising] at the mine. . . ." Appendix F, *infra,* pp. 32a-33a. The Agreement additionally contained a pledge to "maintain the integrity of

2. The Company also sought a preliminary injunction ordering the Union to cease the work stoppage. After the work stoppage ended, the Company abandoned its request for injunctive relief.

this contract" wherein the parties agreed that all disputes and claims which were not settled by agreement would be settled "by the machinery provided in the 'Settlement of Local and District Disputes' article of [the] Agreement. . . ." Appendix F, *infra,* p. 34a.

The work stoppage, which began on August 17, 1969, resulted from the appearance of six individuals, who were not employee-members of Respondent Local 6321, at the entrance to two of the four Robena Mines of the Company shortly before a scheduled shift change. (Ap. 23a; Tr. 96, 113).[3]

It was uncontested, and the district court found that these individuals were United Mine Workers members from Christopher Coal Company's Humphrey No. 7 Mine in West Virginia. (Appendix A, *infra,* p. 2a). The pickets were protesting the discharge of five local union officers and committeemen. (Tr. 31-32, 63-66, 274 and 287). The dispute at the Humphrey Mine arose over a job bidding grievance.[4] (Tr. 35). After the discharge, Humphrey employees began picketing other mines throughout West Virginia and Pennsylvania. (Tr. 63).

3. Reference to pages of the transcript of testimony printed in the appendix before the court of appeals are hereinafter cited as "Ap. .....a"; references to pages of the transcript not printed in the appendix are hereinafter cited as "Tr. ....".

4. The arbitrability of the underlying dispute causing the primary strike was not contested at trial, and the record fairly establishes that the dispute was over an arbitrable issue-job bidding. (Tr. 306, 324-327; Respondents' trial Exhibit A and Appendix A, *infra,* p. 2a). Moreover, job bidding and discharge disputes are *expressly* made arbitrable under the Agreement. Appendix F, *infra,* p. 33a.

Although no stranger pickets were present at any of the four Robena Mines or coal preparation plant from and after 4:00 p.m., Monday, August 18, 1969, until the work stoppage ended on August 24, 1969, employee-members of the Union failed to report for work as scheduled at the Robena Mine complex throughout this period. (Tr. 114-115, 119, 127, 135, 153-158, 271-272, 354 and 357).

During the entire work stoppage, no employee-member of the Union reported any threats, violence or vandalism to the Company. (Tr. 98-101, 103, 112, 115, 119, 126, 153-154, 156, 161, 316-317).

On and after Sunday, August 17, 1969, the Company notified the International and the District of the strike and requested them to take immediate action to terminate it. (Ap. 16a-20a, 34a; Tr. 338, 346).[5] The Company was advised by District 4 officers, however, that no action would be taken to terminate the Robena strike until after the Union learned what action had been taken to resolve the Humphrey dispute. (Ap. 34a). Cecil Metcalf, Secretary-Treasurer of District 4, advised the Company on Wednesday, August 20, 1969, that "we are not going to set a meeting [for Local 6321] until we find out what the Humphrey miners are going to do." (Ap. 35a, 62a).[6]

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5. At the time of this strike, District 4 was in trusteeship; officers of District 4 were appointed by the International, and the International otherwise controlled government of the District. (Ap. 20a; Tr. 322-323, 347-348 and 352).

6. Traditionally, members of the Union will not return to work while a meeting is in recess (Ap. 34a; Tr. 275), and the Local meeting held the day before, and attended by Humphrey miners, had been recessed. (Ap. 29a-30a; Tr. 257).

District 5 representative Roland Nuccetelli reported to the Company on August 20, 1969, that the presidents of United Mine Workers locals in District 5 refused to hold local meetings until the Humphrey miners returned to work. (Ap. 36a-38a).

On Saturday, August 23, 1969, Metcalf advised the Company that progress was being made in the resolution of the Humphrey strike, and that he planned to attend the Robena Local meeting scheduled for that evening. (Ap. 38a-39a). At that meeting, the Robena local voted to return to work at 12:01 a.m. the following Monday. (Ap. 39a).

During this conversation, Metcalf mentioned that the Humphrey miners had threatened violence. (Ap. 40a). However, in prior conversations between Metcalf and the Company, the only reason stated for the strike had been the Humphrey dispute; in particular, on August 18, 1969, Metcalf stated to Elkins Payne, the Company's then superintendent of personnel services for the Frick District, that once the Robena miners went out in sympathy with the Humphrey miners, it would be difficult to get them back to work. (Ap. 28a, 40a-41a).

At trial, the Company contended that the work stoppage was in sympathy with the Humphrey strike, and therefore violated the Union's implied obligation not to strike. The Company further claimed that the International and District 4 were liable for damages by reason of their failure to take all reasonable action to end the work stoppage. The Union contended that the work stoppage was excused by reason of justifiable fear of the employee-members for their personal safety and, second, that the Union made every reasonable effort to end the strike. The Union denied at trial that the work

stoppage was motivated by sympathy for the cause of the Humphrey miners. Appendix B, *infra*, p. 15a.

The district court judge charged the jury that the grievance-arbitration provisions of the Agreement impliedly prohibited work stoppages by employee-members of the Union over arbitrable disputes, and that a work stoppage in sympathy with the strike at the Humphrey Mine would violate the Agreement. The judge further charged that if employee-members stopped work "because of good faith apprehension of physical danger due to abnormally dangerous conditions for work existing at their place of employment, such conduct . . . would not violate the contract." Finally, the court instructed the jury that if the work stoppage were "unauthorized," all three Respondents were obligated to use every reasonable means to end the strike.

The jury returned a verdict in favor of the Company and against all three Respondents. Subsequently, the district court denied the Union's Motion for Judgment Notwithstanding the Verdict, or, in the Alternative, for a New Trial, and the Union appealed.

On appeal, the United States Court of Appeals for the Third Circuit reversed the judgment of the district court and remanded the cause with directions to enter judgment in favor of all three Respondents notwithstanding the verdict.

The court of appeals, relying on this Court's recent decision in *Buffalo Forge Co. v. Steelworkers*, 44 U.S.L.W. 5346 (July 6, 1976),[7] held that absent an express no-strike clause, there was no possible basis for implying from the existence of an arbitration clause a promise not to strike that could have been violated by the Robena strike. The court refused to acknowledge any distinction between the *bona fide*, legal sympathy strike in *Buffalo Forge* and the stranger picket "sympathy" strike in the instant case, stating ". . . the Robena strike was not over any dispute 'between the Union and the employer' — between UMW and U. S. Steel — that was subject to arbitration." (Citation omitted). Appendix B, *infra*, p. 23a.

7. *Buffalo Forge, supra,* was decided after the Union's appeal from the decision of the District Court on post-trial motions.

The court of appeals also concluded that necessarily implicit in the jury's verdict were the factual findings that the Robena strike was in sympathy with the Humphrey strike, and a rejection of the Union's safety defense.[8] By concluding that the jury had found the strike to be a "sympathy" strike, the court below avoided deciding the applicability of this Court's decision in *Gateway Coal Co. v. Mine Workers*, 414 U.S. 368 (1974), to a refusal by union members to cross a stranger picket line because of alleged threats of violence.

Finally, the court of appeals rejected the Company's argument that, regardless of the liability of the Local, the International and District 4 were liable to it for their failure to take all reasonable steps to prevent

8. It is submitted that the Company, as verdict winner, is entitled to the inference that the jury found that the reason for the strike was the alleged fear of the stranger pickets, but that such fear was not prompted by an objectively ascertainable cause and hence the stoppage was not justified. The Opinion of the Court of Appeals deprived the Company of the benefit of that inference.

the spread of an unauthorized and allegedly illegal strike against another employer under the common labor agreement. The court reached this conclusion on the principal ground that the liability of the International and District 4 had been tried on a different theory—liability for inaction in terminating the Robena strike.

Circuit Judge Garth, in his concurring opinion, similarly applied *Buffalo Forge,* and concluded that a sympathy strike cannot, as a matter of law, violate a contract which does not contain an express no-strike clause.

REASONS FOR GRANTING THE WRIT

The Decision Below Is Contrary To Federal Labor Policy And In Direct Conflict With Decisions Of This Court

1. By its holding that a strike in sympathy with an illegal strike over an arbitrable dispute under a common labor agreement cannot, as a matter of law, constitute a breach of contract absent an express no-strike clause, the decision of the court of appeals not only misinterprets this Court's decision in *Buffalo Forge,* but also significantly and adversely affects the basic policy of federal labor law favoring peaceful resolution of industrial disputes as a substitute for economic strife.

In *Buffalo Forge,* this Court held that notwithstanding the arguable illegality of a strike in sympathy with a concededly legal primary strike to secure a labor agreement, such a sympathy strike was not enjoinable pending arbitration of its legality under a labor agreement containing an express no-strike clause. The Court reasoned that the accommodation of the federal policy

favoring arbitration to the anti-injunction provisions of Norris-LaGuardia, as articulated in *Boys Markets v. Retail Clerks Union,* 398 U.S. 235 (1970), limited the jurisdiction of federal courts to issue injunctions to those cases where the arbitral process was jeopardized. Vindication of the arbitral process by an injunction pending arbitration was therefore unnecessary in *Buffalo Forge,* since the dispute between the parties was the result of the strike, rather than the cause of the strike, and the union offered to arbitrate the legality of the strike.

This Court also observed, however, that absent an express no-strike clause, there would have been no basis for implying an obligation not to engage in a sympathy strike which could have been violated by the *Buffalo Forge* sympathy strike:

> "Thus, had the contract not contained a no-strike clause or had the clause expressly excluded sympathy strikes, there would have been no possible basis for implying from the existence of an arbitration clause a promise not to strike that could have been violated by *the sympathy strike in this case.*"
>
> (Citation omitted, emphasis added.) 44 U.S. L.W. 5349-5350.

Ignoring the express limitation of this language to strikes in sympathy with legal primary strikes, the court of appeals concluded that *Buffalo Forge* established that the absence of an express no-strike clause is fatal to a claim that a sympathy strike constitutes a breach of contract, notwithstanding the legality or illegality of the primary strike:

> "Where an obligation not to honor a stranger picket line could arise only from the duty to arbitrate, however, it is unnecessary to arbitrate the issue that Buffalo Forge settles in the Union's favor: whether a mandatory arbitration clause implies a commitment not to engage in sympathy strikes."
>
> Appendix B, *infra*, fn. 13, p. 23a.

While the rationale of *Boys Markets* and *Buffalo-Forge* may permit the conclusion that illegality of the primary strike is irrelevant for purposes of determining whether a sympathy strike may be enjoined, there is no basis for concluding that the issue of whether the sympathy strike is itself illegal under the contract is not even arbitrable. In fact, *Buffalo Forge* never decided the legality of the sympathy strike:

> "Whether the sympathy strike the Union called violated the no-strike clause, and the appropriate remedies if it did, are subject to the agreed-upon dispute-settlement procedures of the contract and are ultimately issues for the arbitrator."
>
> 44 U.S.L.W. at 5349.

It should be noted that the Sixth Circuit in *Southern Ohio Coal Co. v. UMW*, ... F.2d ...., No. 76-2031 (6th Cir. February 11, 1977), although conceding that the arbitration provision of the 1974 agreement, which in relevant part is virtually identical to the provision of the instant Agreement, "could, on its face, include the refusal to cross a picket line. . . ," also incorrectly construed *Buffalo Forge* as barring arbitration of the legality of a strike in sympathy with an illegal strike over an arbitrable dispute. See also *Republic Steel Corporation*

v. UMW, ...F.Supp. ...., No. 76-92 (W.D.Pa. March 21, 1977), for a similar result. Moreover, the court of appeals' determination of non-arbitrability, based on its reading of *Buffalo Forge*, directly conflicts with this Court's decision in *Steelworkers v. Warrior & Gulf Co.*, 363 U.S. 574 (1960), which established a firm presumption of arbitrability for contract disputes.

By applying enjoinability as the test for illegality of a sympathy strike where the labor agreement does not contain an express no-strike clause, the court of appeals ignored the important differences between the Robena strike and the strike in *Buffalo Forge*:

> 1) The stranger picket line here was illegal, being an extension of an illegal strike over an arbitrable dispute. In *Buffalo Forge*, the primary dispute and stoppage were legal; moreover, the sympathy stoppage there was not solely the result of the presence of pickets but of avowed sympathy with the purposes of the legal primary dispute;
>
> 2) The arbitration provisions undermined by the illegal Humphrey strike were further undermined by the Robena strike, since those provisions are contained in the common national Agreement. Separate labor agreements and bargaining units were involved in *Buffalo Forge;*
>
> 3) In addition to an unusually broad arbitration provision, the common labor agreement contains a promise by the Union to maintain the integrity of the contract by exclusive reliance on arbitration for resolution of all disputes not settled by agreement. Such language does not appear in the *Buffalo Forge* agreement;

4) The Robena Union made no simultaneous offer to arbitrate the legality of the strike. In *Buffalo Forge,* the union offered to arbitrate the legality of the strike immediately; and

5) The Robena Union denied the strike was in sympathy with the Humphrey strike and denied responsibility for it at trial. In *Buffalo Forge,* the union authorized and espoused the stoppage.

These differences become even more important when considered together with Section 203(d) of the Labor-Management Relations Act of 1947, as amended (the "Act"), which provides that:

> "[f]inal adjustment by a method agreed upon by the parties is hereby declared to be the desirable method of settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement."

In *Teamsters Local 174 v. Lucas Flour Co.,* 369 U.S. 95 (1962), this Court found an implied obligation not to strike over disputes which were subject to resolution under agreed-upon contractual procedures notwithstanding the absence of an express no-strike undertaking. The obligation not to strike was implied in order to give meaning to the agreement of the parties and to foster the "basic policy" of federal labor law, emphasized in the Act, favoring peaceful settlement of industrial disputes as a substitute for economic warfare.

The same considerations present in *Lucas Flour* are present in this case, and require that an obligation not to strike in sympathy with the illegal strike of a sister union over an arbitrable dispute under a common labor agreement be implied, especially where, as here, the common agreement contains both a broad arbitration provision and an express central obligation to maintain the integrity of the labor agreement by submitting all disputes not settled by agreement to arbitration.[9]

By not only preventing an employer from obtaining equitable relief, but also barring an action by him under Section 301 of the Act against his employees for damages resulting directly from their participation in the illegal strike of a sister union, the decision below condones the spread of an illegal strike to neutral employers, thereby undermining the very policy the federal courts have an obligation to preserve.

In any event, legitimating a strike in sympathy with the illegal strike of a sister union over an arbitrable dispute is simply contrary to both federal labor policy and the obligations, express and implied, of the Union under the Agreement.

2. The decision of the court below, that a strike in sympathy with an illegal strike over an arbitrable dispute under a common labor agreement is not itself a strike over an arbitrable dispute, is in conflict with this Court's decisions in *Boys Markets, Inc. v. Retail Clerks Union,* 398 U.S. 235 (1970), as well as *Teamsters Local 174 v. Lucas Flour Co.,* 369 U.S. 95 (1962) and *Gateway Coal v. UMW,* 414 U.S. 368 (1974).

As a result of its misreading of *Buffalo Forge,* the court of appeals concluded that sympathy strikes are *per se* legal absent an express no-strike clause. Accord-

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9. The Court of Appeals recognized that the Union could be liable for failure to take all reasonable action to prevent the spread of an unauthorized and allegedly illegal strike at another employer under the Agreement, but refused to decide the question, since in its view the case had been tried to the jury on a different theory, i.e., the liability of the Union for inaction in terminating the Robena strike. Appendix B, *infra,* p. 24a-25a.

ingly, the court ignored the critical and controlling distinction between the sympathy strike in *Buffalo Forge* and the "sympathy" strike in the instant case; the existence here of a single national labor agreement binding on *both* striking unions.

By virtue of the national labor agreement, all United Mine Workers members have a unity of interest and a commonality of rights and obligations. Within the commonality of obligations binding upon members of the Humphrey and Robena locals was the duty to settle all unresolved disputes *arising under the national Agreement* by arbitration, especially in view of their promise to maintain the integrity of the Agreement.

Thus, while appropriate in the context of *Buffalo Forge,* the analysis utilized by the court below, concerning whether there existed a dispute which the Company and the Union were bound to arbitrate between themselves, is inappropriate where, as here, the members of both striking unions are bound by a single labor agreement providing for arbitration of all unresolved disputes arising under the common national Agreement. In such a case, a strike in sympathy with an illegal strike over an arbitrable dispute arising under the common labor agreement clearly has the effect, if not the purpose, of adopting the goals of the illegal strike, and frustrating the agreed-upon dispute settlement mechanisms of the labor agreement.

Since the Robena strike was clearly an enlargement of the illegal Humphrey strike over an arbitrable dispute arising under the national Agreement, the Robena strike was a violation of the implied no-strike obligation of the Agreement for which damages were properly awarded by the jury under the authority of *Lucas Flour, Boys Markets,* and *Gateway Coal.*

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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Dated: April 22, 1977

APPENDIX

Appendix A.

APPENDIX A—OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES STEEL CORPORATION,
Plaintiff
v.
UNITED MINE WORKERS OF AMERICA; DISTRICT NO. 4, UNITED MINE WORKERS OF AMERICA; UNITED MINE WORKERS OF AMERICA LOCAL NO. 6321, Defendants.

Civil Action
No. 69-970

Opinion

MILLER, J.

Pursuant to Section 301 of the Labor-Management Relations Act (Act), 29 U.S.C. §185, United States Steel Corporation (USS) sought and obtained monetary damages from the various defendant United Mine Workers of America (collectively UMW) for breach of the 1968 collective bargaining agreement. The suit was brought because of a work stoppage by employee-members of defendants in August 1969 at one of plaintiff's coal mining sites. During and at the close of trial defendants' motions for a directed verdict were denied and the jury returned a verdict for plaintiff in the amount of $44,409.00. Presently before the Court are defendants' amended motions for judgment notwithstanding the verdict or, alternatively, for a new trial. We shall state the facts in a light most favorable to the verdict winner.

Appendix A.

FACTS

For approximately one week in August 1969, plaintiff's Robena Mine Complex in Greene County, Pennsylvania was shut down because employee-members of the defendant United Mine Workers Local 6321 refused to cross stranger picket lines set up by certain West Virginia coal miners.[1] This refusal caused a cessation of work at Robena which in turn caused USS to suffer production losses.

The collective bargaining agreement in force at the time of this incident was the National Bituminous Coal Wage Agreement of 1968.[2] This labor contract does not expressly prohibit strikes or honoring of picket lines. It does however contain final and binding arbitration provisions the first of which reads as follows:

> Should differences arise between the Mine Workers and the operators as to the meaning and application of the provisions of this agreement, or should differences arise about matters not specifically mentioned in this agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences immediately . . . .[3]

The arbitration provisions are given greater effect by the Miscellaneous provisions of the contract:

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1. The pickets were members of Local 1058 United Mine Workers and employees of the Christopher Coal Company which operates its Humphrey Mine (No. 7) in northern West Virginia. The dispute between Local 1058 and Christopher was over job-bidding.

2. PX 1.

3. *Id.* at p. 14.

Appendix A.

> The United Mine Workers of America and the operators agree and affirm that they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the "Settlement of Local and District Disputes" section of this agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract provided and by collective bargaining without recourse to the courts.[4]

It is undisputed that the work stoppage at Robena by members of Local 6321 was not related to any purely local dispute or grievance.

Throughout the trial, USS contended that the employees' refusal to work was out of sympathy for the West Virginia miners' dispute whereas the UMW maintained that the work stoppage was induced by fear and threats of harm generated by the roving bands of stranger pickets.

DISCUSSION

Defendants' assertion that it is entitled to judgment notwithstanding the verdict squarely rests on the premise that the honoring of a stranger picket line is not an actionable wrong under the 1968 labor contract because that agreement does not expressly prohibit a strike or the respecting of such picket lines. Since there

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4. *Id.* at p. 22, ¶3.

was no such promise there was no breach and, the argument follows, if there was no breach there can be no action under §301. While all of the above is true we cannot agree with defendants that such an obligation cannot be implied. *Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S. 95 (1962). The issue then becomes whether the "Implication Doctrine" is applicable here.

It is not disputed that the instant labor contract provided for a mandatory grievance procedure which culminated in binding arbitration. And this Court does not have to cite for the parties those authorities standing for the proposition that federal labor policy favors, wherever there is doubt, utilization of the arbitration machinery. In essence defendants' argument here is that the obligation not to strike or honor picket lines cannot be implied because the primary dispute spawning the work stoppage, not being between members of Local 6321 and USS, was not arbitrable. In this regard the UMW places reliance on the fact that the work stoppage was due solely to the appearance of stranger pickets. Since they characterize the dispute as "not local" the argument follows that it does not fall within the arbitration provisions of the labor agreement. It is upon this foundation which rests the bold assertion that the work stoppage, ". . . whether for reasons of fear or sympathy, did not breach the 1968 agreement".[5] Reduced to bare essentials the UMW is telling this Court that there was nothing to arbitrate.

While there does exist authority to support defendants' contention we are convinced that this precise

5. Defendants' Brief in Support of Motions for Judgment Notwithstanding Verdict or in the Alternative for New Trial, p. 15.

issue has been laid to rest in this jurisdiction. *Island Creek Coal Co. v. UMW*, 507 F. 2d 650 (3 Cir. 1975), *cert. denied*, 44 U.S.L.W. 3192 (October 6, 1975); see *Bethlehem Mines Corp. v. UMW*, 375 F. Supp. 980 (W.D. Pa. 1974). *Island Creek* leaves no doubt that, even in the absence of both a no-strike clause and a reference to honoring of picket lines, the work stoppage becomes the subject of arbitration. Notwithstanding the fact that *Island Creek* construed the 1971 National Bituminous Coal Wage Agreement we believe it to be dispositive of this issue because that contract's "settlement of disputes" language is virtually identical to the language quoted above. From the inception of this lawsuit plaintiff has steadfastly maintained that the work stoppage was a matter for arbitration. It is clear to this Court that under the facts of the case at bar the refusal of Local 6321 to work was an arbitrable issue.

Since the question of whether the duty to work despite the appearance of foreign pickets can be implied in the subject contract the work stoppage was actionable as a breach of contract because arbitration — not industrial strife — was the desired mode of resolution. The defendants' motion for judgment notwithstanding the verdict must therefore be denied.

In requesting a new trial the UMW contends that the Court made various errors with regard to admissibility and non-admissibility of certain testimony.

The first assigned error relates to the testimony of Mr. Elkins Payne, plaintiff's then Superintendent of Personnel Services. This Court permitted Mr. Payne to testify to conversations he had during the strike with two representatives of District 5, UMW, the substance of these conversations indicating that the work stoppage

in that district was motivated by reasons *other* than fear and coercion. This testimony, it is argued, was hearsay and highly prejudicial because it tended to discredit defendants' evidence pointing to a proper purpose for the walk out. While that may well have constituted hearsay we believe it to be admissible, in view of the fact that the strike was spreading to other coal mines operated by USS and located in District 5, under the res gestae exception. Henry, *Pennsylvania Evidence* §466 at p. 465 (4th Ed. 1953); *see McMahon v. Edward Budd Mfg. Co.,* 108 Pa. Super. Ct. 235 (1933). The evidence was introduced for the purpose of showing the intent of neighboring union districts within which plaintiff had similar coal processing facilities. This evidence merely corroborated the other testimony adduced by USS to show that the work stoppage at the Robena complex (District 4) was being waged for wrongful reasons.[6]

Moreover there was ample evidence to support the jury's finding of wrongful purpose in accord with our charge thus the disputed testimony, being cumulative, was harmless in our view at any rate. *See Masterson v. Pennsylvania R. Co.,* 182 F. 2d 793, 797-98 (3 Cir. 1950).

Next it is argued that the Court erred in not permitting certain testimony by Nick Bosser, President of Local 6321, which pertained to a special meeting of the membership called while the strike was in progress. Specifically we granted plaintiff's objection, on grounds of hearsay, to Bosser's testifying as to remarks made at the meeting by unnamed rank and file workers concerning threats from the pickets. On brief defendants assert

6. *See* TR 34-35, 39-40, 72, 98-99, 101, 112, 126 and 161 which support plaintiff's contention that the work stoppage was borne more of sympathy than fear for safety.

that the extra-judicial utterances to be related by Bosser do not constitute hearsay evidence because they were not offered for their truth and veracity, but rather for the purpose of showing that such statements were made at the meeting. *Commonwealth v. Ricci,* 332 Pa. 540 (1939); *Wagner v. Wagner,* 158 Pa. Super. Ct. 93 (1945). Since such threats were reported at the meeting the contention surfaces that these reports led to apprehension on the part of the local's membership and therefore the UMW was improperly denied the opportunity to persuade the jury that the work stoppage was due to fear of physical harm and reprisal. Defendant's point is well taken however it does not warrant a new trial.

Apart from our observation—and presumably the jury's—that the evidence shows no more than a few West Virginia pickets at any one Robena mine entrance as compared to hundreds of Local 6321 employees, recent law concerning the threat-to-safety defense leads us to believe that admission of such testimony today would be clear error. *Gateway Coal Co. v. UMW,* 414 U.S. 368, 386-87 (1974), *rev'g.* 466 F. 2d 1157 (3 Cir. 1972), held that a union must prove such a defense by objective evidence. We read that decision to render the employees' subjective state of mind in this case immaterial. "If the courts require no objective evidence that such conditions *actually* obtain, they face a wholly speculative inquiry into motives of the workers." *Gateway supra,* at 386. (Emphasis added.) In the absence of actual threats or violence defendants' primary position regarding the Robena work stoppage cannot be sustained.

Next it is urged that the Court's charge misstated the evidence in summarizing plaintiff's theory of the case. Specifically we stated:

> The plaintiff contends not only [that] there existed a dispute between the parties by virtue of the work stoppage and the grievance procedures in the existing contract which was the sole means of resolving that dispute and they were violated by defendants, but that the work stoppage was encouraged, authorized, prolonged, called and ratified by the defendants as an act in sympathy with the miners at the Humphrey mine.[7]

Because the record is devoid of evidence showing that defendants "called" or "authorized" the work stoppage, it is claimed that the above remarks are inaccurate.

The fact is that the Court was not stating (or misstating) the evidence but merely summarizing the legal contentions of the parties. Since it was obvious throughout the proceedings that the issue was not whether defendants formally "called" or "authorized" this strike we do not think the jury was misled in any way. Plaintiff's theory, as stated, under the facts of this case was one in which inferences could be drawn from defendants' *conduct*. The nub of the theory here was constructive authorization. The clear import of the whole charge does no more than capsulize that theory. Moreover, the Court's instruction on the law removes any doubt as to whether the jury was misguided by the summary.[8] This claim too is meritless and, in any event, would not justify a new trial.

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7. TR 400.
8. *See* TR 403.

Finally the UMW submits that the Court erred in denying its seventh point for charge[9] and, instead charging as follows:

> In considering this claim, you are instructed it is the duty of the defendants under the contract to undertake every reasonable means to put an end to an unauthorized work stoppage.
>
> Therefore, members of the jury, it is for you to determine whether or not the work stoppage was unauthorized, and if you so find, whether the defendants acted responsibly in discharging their obligations to use every reasonable means, under all the circumstances to end the unauthorized work stoppage.[10]

We believe that this charge is proper and in accord with the law of this Circuit. *See Eazor Express, Inc. v. International Bhd. of Teamsters,* 520 F. 2d 951 (3 Cir. 1975); *Penn Packing Co., Inc. v. Amalgamated Meat Cutters Local 195,* 497 F. 2d 888 (3 Cir. 1974).

Based on our discussion of the foregoing points and a review of the record and applicable law the Court does not perceive any error in the trial of this case. If there were any improprieties they certainly do not arise to a level inconsistent with substantial justice under Rule 61 of the Federal Rules of Civil Procedure. Defendants' motion for a new trial shall therefore be denied.

An appropriate order shall be entered.

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9. Point seven reads:
   You are instructed that the International and District Unions, by entering into the National Bituminous Coal Wage Agreement of 1968 which provided for the settlement of some types of disputes by arbitration did not thereby become liable for damages resulting from a wildcat or unauthorized strike. (Citations omitted.)
10. TR 402-03.

Appendix A.

Order of Court

AND NOW, to-wit, this 13th day of November, 1975, it is hereby ORDERED and DIRECTED that the defendants' motions, as amended, for judgment notwithstanding the verdict or, in the alternative, for a new trial be and the same hereby are denied.

JOHN L. MILLER
United States District Judge

cc: James H. McConomy, Esq.
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Appendix B.

APPENDIX B—OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 76-1060

UNITED STATES STEEL CORPORATION
v.
UNITED MINE WORKERS OF AMERICA;
DISTRICT NO. 4, UNITED MINE WORKERS
OF AMERICA;
UNITED MINE WORKERS OF AMERICA
LOCAL NO. 6321,
Appellants

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
D.C. Civil Action No. 69-970

Appendix B.

Argued September 7, 1976

Before ADAMS, ROSENN and GARTH, *Circuit Judges*

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Attorneys for Appellee

Opinion of the Court
(Filed December 20, 1976)

ROSENN, *Circuit Judge*

This case presents a question of increasing importance in industrial relations: whether a union can be held liable to an employer in money damages for the refusal of union members to cross a stranger picket line[1] when the collective bargaining agreement between the union and the employer provides a detailed grievance-arbitration

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1. A "stranger picket line" is a picket line established by a union other than the union which is a party to the employer's collective bargaining agreement.

Appendix B.

procedure but contains no express no-strike clause. A jury rendered a verdict in favor of the plaintiff employer, United States Steel Corporation ("U.S. Steel"), and against the defendant International Union, United Mine Workers of America ("UMW"), its District 4, and its Local Union 6321. The district judge, relying on this court's decision in *Island Creek Coal Co. v. UMW*, 507 F. 2d 650 (3d Cir.), *cert. denied*, 423 U.S. 877 (1975), denied the defendants' motion for judgment notwithstanding the verdict, or, in the alternative, for a new trial.[2] Because we believe that the Supreme Court's recent decision in *Buffalo Forge Co. v. United Steelworkers*, 44 U.S.L.W. 5346 (U.S. July 6, 1976), undercuts the vitality of *Island Creek*, we reverse.[2A]

I.

In August 1969, U.S. Steel's Robena Mine Complex in Greene County, Pennsylvania, was closed down for approximately one week because employee-members of UMW Local 6321 refused to cross picket lines established by certain West Virginia coal miners. The pickets, who were members of UMW Local 1058 and employees of the Christopher Coal Company, were protesting the discharge of five local union officers and committeemen from Christopher's Humphrey mine in northern West Virginia.[3]

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2. United States Steel Corp. v. UMW, Civil No. 69-970 (W.D. Pa., Nov. 13, 1975).

2A. *See* Latrobe Steel Co. v. United Steelworkers, No. 76-1080 (3d Cir. Nov. 15, 1976).

3. The dispute at the Humphrey mine arose over a job-bidding grievance. After the five union officers and committeemen were discharged, Humphrey employees began picketing other mines in West Virginia and Pennsylvania.

At the time of this incident, the collective bargaining agreement in force between UMW and U.S. Steel was the National Bituminous Coal Wage Agreement of 1968.[4] That contract did not expressly prohibit strikes or the honoring of picket lines. The agreement did, however, provide for detailed grievance-arbitration procedures covering "differences . . . as to the meaning and application of the provisions of this agreement, . . . differences . . . about matters not specifically mentioned in this agreement, or . . . any local trouble of any kind. . . ."[5] These arbitration provisions were given even greater effect by the parties' agreement that they would "maintain the integrity of [the] contract" and that all disputes which were not settled by agreement would be settled "by the machinery provided in the 'Settlement of Local and District Disputes' section of [the] agreement unless national in character. . . ."[6]

U.S. Steel brought an action for money damages founded on section 301 of the Labor-Management Relations Act of 1947, 29 U.S.C. §185, against the International UMW, its District No. 4, and Local Union No. 6321.[7] The corporation claimed that the week-long work stoppage at the Robena complex was in fact a sympathy

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4. This is the same collective bargaining agreement that was construed by the Supreme Court in Gateway Coal Co. v. UMW, 414 U.S. 368 (1974).

5. National Bituminous Coal Wage Agreement of 1968, "Settlement of Local and District Disputes."

6. *Id.*, "Miscellaneous," ¶3.

7. U.S. Steel's complaint also sought a preliminary injunction ordering the defendants to cease the work stoppage. After the Robena employees returned to work, U.S. Steel did not proceed with the request for an injunction.

strike in support of the Humphrey miners, and that the failure of the defendants to invoke the grievance-arbitration procedures to resolve the problem breached the collective bargaining agreement.

At the trial in November 1973, the defendants denied that the Robena work stoppage was a sympathy strike. Rather, they asserted, the union members had refused to cross the stranger picket line because the Humphrey pickets had allegedly threatened violence should the Robena employees return to work. The defendants claimed that because the Robena work stoppage resulted from the employees' fear for their safety, resort to the grievance-arbitration procedures was not obligatory. In making this claim, the defendants relied on *Gateway Coal Co. v. UMW*, 466 F.2d 1157 (3d Cir. 1973), which held that absent an express provision in the collective bargaining agreement, a union has no contractual duty to submit a safety dispute to arbitration. Subsequent to the trial in the instant case, the Supreme Court reversed this court's *Gateway* decision, 414 U.S. 368 (1974).

The district judge charged the jury that the grievance-arbitration procedures provided in the collective bargaining agreement impliedly prohibited work stoppages by the defendants' members, and that a work stoppage in sympathy with the strike at the Humphrey mine would violate the contract. He further charged, however, in accordance with this court's *Gateway* decision, that if the defendants' members stopped work "because of good faith apprehension of physical danger due to abnormally dangerous conditions for work existing at their place of employment, such conduct . . . would not violate the contract." The district judge also instructed

the jury that if the Robena work stoppage was "unauthorized," then all three defendants had an obligation to use every reasonable means under the circumstances to end that work stoppage.

The jury returned a verdict in favor of the plaintiff, U.S. Steel, and against all three defendants. The defendants then moved for judgment notwithstanding the verdict, or, in the alternative, for a new trial, contending that an obligation not to strike could not be implied because the primary dispute that caused the work stoppage, not being between members of Local 6321 and U.S. Steel, was not arbitrable. When the district judge denied the motion in 1975, he acknowledged the existence of authority to support the defendants' contention but followed this court's decision in *Island Creek Coal Co. v. UMW*, 507 F.2d 650 (3d Cir.), *cert. denied*, 423 U.S. 877 (1975).[8] *Island Creek* held that a dispute over whether a union had contracted away its members' right to honor a stranger picket line was arbitrable under the grievance-arbitration provisions of the National Bituminous Coal Wage Agreement of 1971, provisions which, for practical purposes, were identical to the grievance-arbitration provisions of the 1968 Agreement.

While this appeal was pending, the Supreme Court decided *Buffalo Forge Co. v. United Steelworkers*, 44 U.S.L.W. 5346 (U.S. July 6, 1976). At our request, the parties submitted supplemental briefs considering the applicability of *Buffalo Forge* to this case.

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8. United States Steel Corp. v. UMW, Civil No. 69-970 (W.D. Pa., Nov. 13, 1975), typed op. at 4.

II.

In *Buffalo Forge*, production and maintenance employees honored picket lines established at their employer's plants by "office clerical-technical" ("O&T") employees during an economic strike. The production and maintenance employees were parties to a collective bargaining agreement which contained an express no-strike clause and which provided a grievance-arbitration procedure covering "differences . . . as to the meaning and application of the provisions of [the] Agreement" and "any trouble of any kind" arising at the plant. 44 U.S.L.W. at 5347.

The employer brought suit under section 301 of the Labor-Management Relations Act, 29 U.S.C. §185 (1970), claiming that the strike by production and maintenance employees was a violation of the express no-strike clause and contending, in the alternative, that the question whether the work stoppage violated the no-strike clause was itself arbitrable. The employer requested both injunctive relief and damages. The union asserted that the work stoppage did not violate the no-strike clause.

The district court in *Buffalo Forge* found that the production and maintenance employees were engaged in a sympathy action in support of the striking O&T employees. The district court then held that section 4 of the Norris-LaGuardia Act, 29 U.S.C. §104 (1970), forbade the issuance of an injunction because the production and maintenance employees' strike was not over an arbitrable grievance and thus was not within the narrow exception to the Norris-LaGuardia Act established in *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970). The Court of Appeals for the Second Circuit affirmed the denial of a preliminary injunction.

The Supreme Court of the United States affirmed the decision of the Second Circuit. *Boys Markets* injunctions, the Court held, are limited to situations in which a strike has been "precipitated by" or is "over" an arbitrable dispute between the employer and the striking union. Although finding that the question whether the strike by production and maintenance employees violated their express no-strike undertaking was arguably arbitrable, even though the strike was not enjoinable, the Supreme Court recognized that this was a secondary dispute which was a result and not a cause of the strike:

> *Boys Markets* plainly does not control this case. The District Court found, and it is not now disputed, that the strike was not *over* any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract. The strike at issue was a sympathy strike in support of sister unions negotiating with the employer; neither its causes nor the issue underlying it were subject to the settlement procedures provided by the contract between the employer and respondents. The strike had neither the purpose nor the effect of denying or evading an obligation to arbitrate or of depriving the employer of his bargain. Thus had the contract not contained a no-strike clause or had the clause expressly excluded sympathy strikes, there would have been no possible basis for implying from the existence of an arbitration clause a promise not to strike that could have been violated by the sympathy strike in this case.

44 U.S.L.W. at 5349-50 (emphasis in original).

Buffalo Forge's specific holding that a district court is without power to enjoin a sympathy strike pending an arbitrator's decision as to whether the strike is forbidden by a no-strike clause of a collective bargaining agreement rests ultimately on the terms of the Norris-LaGuardia Act, 29 U.S.C. §§101-15 (1970). Because the instant case, unlike *Buffalo Forge,* was tried on the issue of liability for money damages resulting from a breach of contract rather than on the issue of entitlement to injunctive relief, the Norris-LaGuardia Act has no application to this case. That does not mean, however, that *Buffalo Forge* is not dispositive of the present appeal. The Supreme Court's decision indicates that in order for a work stoppage to be enjoinable pending arbitration, the collective bargaining agreement must provide arbitration procedures and the dispute that precipitates the stoppage must be subject to binding arbitration under the terms of the contract. The propriety of an award of monetary damages resulting from a work stoppage, on the other hand, depends on the determination whether the union is under a contractual duty not to strike. Because the collective bargaining agreement in the instant case did not contain an express no-strike clause, that determination in turn depends on whether the dispute underlying the work stoppage was arbitrable. *Gateway Coal Co. v. UMW,* 414 U.S. 368 (1974). In both cases, therefore, arbitrability is a key issue. What *Buffalo Forge* establishes regarding the arbitrability of sympathy strikes is as applicable to this particular suit for monetary damages as it is to a request for injunctive relief.

III.

We reject U.S. Steel's contention in this court that the work stoppage at the Robena mine was not a sympathy strike in support of the Humphrey employees, but rather was a dispute between the parties as to the safety of conditions for work. *Buffalo Forge* has enabled U.S. Steel to find grist in the union's argument in the district court: what the employer characterized in the heat of trial as a sympathy strike[9] it urges in this more temperate appellate climate to have been a safety dispute.[10] U.S. Steel's candor in acknowledging its earlier misconception of the essence of the controversy is admirable but unavailing. We must scrutinize the factual issues as they were submitted to the jury, not as they are portrayed in the light of recent legal developments. The district judge charged the jury that if the defendants' members stopped work in sympathy with the strike at the Humphrey mine, such conduct would violate the contract, but that if the defendants' members stopped work because of "good faith apprehension of physical danger due to abnormally dangerous conditions for work existing at their place of employment," such conduct

9. *See, e.g.,* Transcript at 239-40:

MR. McCONOMY [counsel for plaintiff]: . . . There is no question it was a sympathy strike.

10. Appellee's Brief in Response to the Court's Request of July 30, 1976, Concerning the Implications of *Buffalo Forge* at 5:

[T]he work stoppage arose over a dispute between the parties as to the safety of conditions for work, thereby establishing a clear breach of the implied no-strike obligation of the labor agreement under the Supreme Court's decision in *Gateway Coal Co. v. United Mine Workers,* 414 U.S. 368 (1974).

would not violate the contract. Implicit in the jury's verdict for the plaintiff was the factual finding that the Robena work stoppage was a sympathy strike in support of the Humphrey employees and a rejection of the "safety" theory advanced by the union.

On appeal from the granting or denial of a motion for judgment notwithstanding the verdict, we are bound to view the evidence in the light most favorable to the verdict winner and to give that party the benefit of all inferences that the evidence fairly supports. *See, e.g., Fireman's Fund Insurance Co. v. Videfreeze Corp.,* Nos. 75-2405, -2406 (3d Cir. Aug. 25, 1976), slip op. at 12; *O'Neill v. Kiledjian,* 511 F. 2d 511, 513 (6th Cir. 1975); *Cockrum v. Whitney,* 479 F. 2d 84, 85-86 (9th Cir. 1973); 5A J. Moore, Federal Practice ¶ 50.07, at 2356-57 (1975). The record adequately supports the jury's implied factual finding that the work stoppage at the Robena mine was a sympathy strike. We must therefore treat the Robena work stoppage as a sympathy strike, and determine whether that strike was arbitrable under the National Bituminous Coal Wage Agreement of 1968 and the principles established by *Buffalo Forge.*[11]

In this case, as in *Buffalo Forge,* the strike was not "*over* any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract." 44 U.S.L.W. at 5349 (emphasis in original). The Robena strike, like the strike in *Buffalo Forge,* "was a sympathy strike . . .; neither its causes

11. Consequently, we have no occasion to consider the applicability of *Gateway Coal* to a refusal by union members to cross a stranger picket line because the pickets have allegedly threatened violence. *See* note 10 *supra.*

nor the issue underlying it were subject to the settlement procedures provided by the contract between the employer" and the union. *Id.* The job-bidding dispute at the Humphrey mine[12] which precipitated the Robena work stoppage was a dispute between the Christopher Coal Company and members of UMW Local 1058; that dispute could not possibly have been arbitrated by the United States Steel Corporation and UMW Local 6321. Had the contract in the instant case contained a no-strike clause, the issue whether the sympathy strike violated the union's no-strike undertaking might have been arbitrable. In the absence of a no-strike clause, however, *Buffalo Forge* establishes that there is "no possible basis for implying from the existence of an arbitration clause a promise not to strike that could have been violated by the sympathy strike" in this case. 44 U.S.L.W. at 5349-50. To the extent that *Island Creek Coal Co. v. UMW,* 507 F. 2d 650 (3d Cir.), *cert. denied,* 423 U.S. 877 (1975), suggests otherwise, it seems clear that that decision cannot survive *Buffalo Forge.* The Supreme Court observed in the latter case that

> [t]o the extent that the Court of Appeals . . . and other courts, *Island Creek Coal Co. v. United Mine Workers,* 507 F. 2d 650, 653-54 (CA3), *cert. denied,* 423 U.S. 877 (1975) . . ., have assumed that a mandatory arbitration clause implies a commitment not to engage in sympathy strikes, they are wrong.

44 U.S.L.W. at 5350 n.10. Quite simply, the work stoppage at the Robena mine presented no arbitrable issue.[13] We

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12. *See* note 3 *supra.*

13. U.S. Steel attempts to circumvent *Buffalo Forge* by arguing that the defendants are liable for breach of their duty to arbitrate. The union had a contractual obligation, the employer asserts, to arbitrate the dispute over whether union members had the right to honor the stranger picket line. Had the contract contained an express no-strike clause, this contention might have merit. Where an obligation not to honor a stranger picket line could arise only from the duty to arbitrate, however, it is unnecessary to arbitrate the issue that *Buffalo Forge* settles in the union's favor: whether a mandatory arbitration clause implies a commitment not to engage in sympathy strikes.

conclude, therefore, that the Robena sympathy strike was not a breach of the National Bituminous Coal Wage Agreement of 1968.

U.S. Steel contends that the Robena work stoppage was in fact "over" an arbitrable dispute. The controversy between Local 1058 and the Christopher Coal Company which precipitated the Robena strike was over job bidding and employee discharges. These types of disputes, the employer argues, "are typically and traditionally subject to resolution under the arbitration provisions of the 1968 labor agreement" to which Local 1058 and Christopher were parties. U.S. Steel thus attempts to distinguish this case from *Buffalo Forge* on the ground that the Humphrey strike, which triggered the Robena work stoppage, was an illegal work stoppage over a dispute subject to arbitration, whereas the primary dispute in *Buffalo Forge* was concededly legal.

The record contains little evidence regarding the dispute at the Humphrey mine, and we are unwilling to assume, without more, that that dispute was arbitrable and the Humphrey strike illegal. We think it sufficient to dispose of U.S. Steel's contention by observing that the Robena strike was not over any dispute "between the Union and the employer"—between UMW and U.S. Steel —that was subject to arbitration. *Buffalo Forge, supra,* 44 U.S.L.W. at 5349.

IV.

U.S. Steel contends that even if the Robena strike did not violate the Local Union's implied no-strike obligation, we must nevertheless affirm the district court's judgment as to the International and the District Union. Under the National Bituminous Coal Wage Agreement of 1968, the employer asserts, the International and the District were obliged to take all reasonable steps to terminate the allegedly illegal Humphrey strike and to prevent its spread. The jury, the argument concludes, found the International and the District vicariously liable for the conduct of the members of Local 6321 and primarily liable for their own failure to take all reasonable steps to prevent the spread of the Humphrey strike to the Robena mine. U.S. Steel relies on *Eazor Express, Inc. v. International Brotherhood of Teamsters,* 529 F. 2d 951, 959 (3d Cir. 1975), *cert. denied,* 424 U.S. 935 (1976), which held that an express no-strike undertaking pending arbitration implies an obligation on the part of the union parties to use every reasonable means to bring an end to a strike begun by their members without their authorization, and on *United States Steel Corp. v. UMW,* 534 F. 2d 1063, 1072-73 (3d Cir. 1976), which extended *Eazor Express* to no-strike obligations implied by binding arbitration provisions.

We decline to consider whether the rationale of *Eazor Express* would permit an employer to recover damages for the failure of a union to take all reasonable steps to prevent the spread of an unauthorized and allegedly illegal strike against another employer. This case was not tried on that theory. As we have previously pointed out, the record presents little evidence regarding the dispute at the Humphrey mine. U.S. Steel argued in the

district court not that the International and the District Union were liable for failing to take reasonable action to prevent the spread of the Humphrey dispute, but rather that the International and the District Union were liable for inaction in terminating the Robena strike. Because we have concluded that the Robena work stoppage did not breach the collective bargaining agreement, and because the issue of the union's liability for the spread of the Humphrey strike was not tried in the district court, the judgment as to the International and the District cannot stand.

V.

Accordingly, the judgment of the district court will be reversed and the cause remanded with directions to enter judgment in favor of all defendants notwithstanding the verdict.

TO THE CLERK:

Please file the foregoing opinion.

.....

Circuit Judge

UNITED STATES STEEL CORPORATION V. UNITED MINE WORKERS OF AMERICA; DISTRICT NO. 4 UNITED MINE WORKERS OF AMERICA; UNITED MINE WORKERS OF AMERICA LOCAL NO. 6321, APPELLANTS, NO. 76-1060

GARTH, *Circuit Judge,* concurring:

Based on my understanding of the teaching of *Buffalo Forge Co. v. United Steelworkers,* 44 U.S.L.W. 5346 (July 6, 1976), I concur in the result reached by the majority. I believe that *Buffalo Forge* can best be understood by examining its implication with respect to three categories of labor contracts.

The first category consists of contracts which expressly forbid sympathy strikes, as well as all other strikes, and which provide for mandatory arbitration of all grievances. When a contract in this category is in force, the reasoning of *Buffalo Forge* clearly suggests that the legality of a sympathy strike would be immediately arbitrable and that such a strike could be enjoined pending the outcome of the arbitration. Damages for such an illegal strike would undoubtedly be recoverable.

The second category consists of contracts — like the one involved in *Buffalo Forge* — which contain general "no strike" clauses and provisions for mandatory arbitration of grievances. Contracts in this category differ from those in the first category in one important respect: whereas the contracts in the first category expressly forbid sympathy strikes, those in the second simply forbid all strikes generally. *Buffalo Forge* holds that when contracts in this category are involved, the legality of a sympathy strike is clearly subject to arbitration but that the sympathy strike cannot be enjoined

pending the arbitrator's decision. *Buffalo Forge* also indicates that should the arbitrator eventually determine that the strike was illegal, it could be enjoined at that time. 44 U.S.L.W. at 5349. Although *Buffalo Forge* did not discuss whether an employer could recover damages for a sympathy strike under a contract of this sort it would appear that damages could be recovered in those cases in which it was ultimately determined that the strike was illegal.

The third category consists of contracts — like the one involved in *Island Creek Coal Co. v. United Mine Workers,* 507 F.2d 650 (3d Cir. 1975), *cert. denied,* 423 U.S. 877 (1975) — which contain provisions for mandatory arbitration of grievances but which do not contain an express "no strike" clause of any sort. With respect to these contracts, *Buffalo Forge* stated flatly: "To the extent that the Court of Appeals . . . have assumed that a mandatory arbitration clause implies a commitment not to engage in sympathy strikes, they are wrong." 44 U.S.L.W. at 5350 N.10. Justice White also stated that under such a contract there would be "no possible basis for implying from the existence of an arbitration clause a promise" not to engage in sympathy strikes. *Id.* at 5349-50. In other words, *Buffalo Forge* established as a matter of law that a sympathy strike does not violate a labor contract which falls into this category. Of course, it goes without saying that a sympathy strike could not be enjoined under this type of contract. In addition, the legality of such a strike would not even be subject to arbitration, since *Buffalo Forge* established that such strikes are legal. Furthermore, since as a matter of law sympathy strikes cannot violate contracts in this category, damages could not be recovered.

The labor contract involved in the instant case quite clearly falls into the third category. Hence, there having been no contract violation by UMW Local 6321 and therefore no damages allowable to United States Steel Corporation, judgment should have been entered in favor of the Union.

APPENDIX C—JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 76-1060

UNITED STATES STEEL CORPORATION
vs.
UNITED MINE WORKERS OF AMERICA; DISTRICT NO. 4 UNITED MINE WORKERS OF AMERICA; UNITED MINE WORKERS OF AMERICA LOCAL NO. 6321, Appellants

(D. C. Civil Action No. 69-970)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Present: ADAMS, ROSENN and GARTH, *Circuit Judges*

Judgment

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed November 13, 1975, be, and the

same is hereby reversed and the cause remanded with directions to enter judgment in favor of all defendants notwithstanding the verdict in accordance with the opinion of this Court. Costs are taxed against the appellee.

Attest:

THOMAS P. QUINN
Clerk

December 20, 1976

APPENDIX D—ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DENYING APPELLEE'S PETITION FOR REHEARING

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 76-1060

UNITED STATES STEEL CORPORATION
v.
UNITED MINE WORKERS OF AMERICA; DISTRICT NO. 4, UNITED MINE WORKERS OF AMERICA; UNITED MINE WORKERS OF AMERICA LOCAL NO. 6321, Appellants

Sur Petition for Rehearing

Present: SEITZ, *Chief Judge*, VAN DUSEN, ALDISERT, ADAMS, GIBBONS, ROSENN, WEIS, and GARTH, *Circuit Judges*

The petition for rehearing filed by UNITED STATES STEEL CORPORATION in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,
MAX ROSENN
Judge

Dated: January 25, 1977

APPENDIX E—STATUTES INVOLVED

Labor Management Relations Act
(29 U.S.C. §173(d))

§ 173. FUNCTIONS OF SERVICE.

(d) Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

Labor Management Relations Act
(29 U.S.C. §185(a))

§ 185. SUITS BY AND AGAINST LABOR ORGANIZATIONS.

(a) Venue, amount, and citizenship.

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

APPENDIX F—RELEVANT PROVISIONS OF THE NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1968.

SETTLEMENT OF LOCAL AND DISTRICT DISPUTES

Should differences arise between the Mine Workers and the operators as to the meaning and application of the provisions of this agreement, or should differences arise about matters not specifically mentioned in this agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences immediately: (*The parties will not be represented by legal counsel at any of the steps below.*)

1. Between the aggrieved party and the mine management.

2. Through the management of the mine and the mine committee.

3. Through district representatives of the United Mine Workers of America and a commissioner representative (where employed) of the coal company.

4. By a board consisting of four members, two of whom shall be designated by the Mine Workers and two by the operators. Neither the Mine Workers' representatives on the board nor the operators' representatives on the board shall be the same persons who participated in steps (1), (2), or (3) of this procedure.

5. Should the board fail to agree the matter shall, within twenty (20) days after decision by the board, be referred to an umpire to be mutually agreed upon by the operator or operators affected and by the duly designated representatives of the United Mine Workers of America, and the umpire so agreed upon shall expeditiously and without delay decide said case. The decision of the umpire shall be final. Expenses and salary incident to the services of an umpire shall be paid equally by the operator or operators affected and by the Mine Workers.

A decision reached at any stage of the proceedings above outlined shall be binding on both parties hereto and shall not be subject to reopening by any other party or branch of either association except by mutual agreement.

DISCHARGE CASES

When a mine worker has been discharged from his employment and he believes he has been unjustly dealt with, it shall be a case under the "Settlement of Local and District Disputes" clause. In all discharge cases should it be decided under the rules of this agreement that an injustice has been dealt the mine worker, the operator shall reinstate and compensate him at the rate based on the earning of said mine worker prior to such discharge. Provided, however, that such case shall be taken up within five days from the date of discharge.

SENIORITY

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12. Grievances which arise under the provisions of this section shall be processed under the "Settlement of Local and District Disputes" clause of this agreement.

Appendix F.

MISCELLANEOUS

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3. The United Mine Workers of America and the operators agree and affirm that they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the "Settlement of Local and District Disputes" section of this agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract provided and by collective bargaining without recourse to the courts.
